

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.**

S.B. Criminal Appeal No.162/1984

Yadram @ Shantilal V/s State of Rajasthan

Date of Order : 19th January, 2007.

HON'BLE MR.R.S. CHAUHAN, J.

Mr. Suresh Dhanwal for Mr. P. Balwada
for the appellant.
Mr. Jagdish Lamba, PP for the State.

By Court:

The accused appellant has challenged the judgment dated 22.03.1984 passed by the Additional Sessions Judge, Dholpur whereby he has been convicted for offence under Section 395 of Indian Penal Code (henceforth to be referred to as 'IPC', for short) and has been sentenced to five years of rigorous imprisonment and has been imposed with a fine of Rs.5,000/-, and to further undergo five months of rigorous imprisonment in default thereof.

Briefly, the facts are that on 08.12.1977,

Akhesingh (P.W. 1) lodged a oral report at Police Station Basedi wherein he claimed that he is a resident of village Phunspura. According to him, on the night of 07.12.1977 while he was sleeping in his house, between 12 O'clock and 1.00 A.M., his wife, Anguri, awoke him up and told him that thieves have entered their house. As he tried to go out, he discovered that door was locked from the outside. Through the chinks of the doors, he could see two persons standing outside. He shouted for his brothers, Mansingh and Madansingh. Hearing his shout, both Mansingh and Madansingh came out from their rooms. As soon as his brothers came out from their rooms, the assailants fired at them. Consequently, both of them were injured and they fell. After sometime, both the brothers revived and attacked the assailants with "lathis". Madansingh's wife, Mst. Kasturi, came forward to open the door of the informant's room. In order to stop her from doing so, the thieves standing outside the door attacked her with a sword. Consequently, she suffered injuries on her hand and head. She escaped from that place and rushed to the roof of the house where she shouted for help to the villagers, who were fast asleep. Hearing her

shouts, the villagers rushed to their rescue. When the thieves saw the villagers coming towards the house, they ran away. Eventually, one of them was caught by the villagers. According to the complainant, there were six persons, who had committed dacoity in his house. The person, who was caught, gave out his name as "Yadram son of Shri Nathu." The complainant and the villagers brought him to the Police Station. The complainant also handed over a box which the dacoits had abandoned while they were running. On the basis of this report, a formal FIR (Ex.P1), FIR No.87/1977 was chalked out for offences under Section 458, 380, 307 of IPC. During the course of the investigation, the police arrested four other accused persons namely Ramavtar, Padma, Maharaj Singh and Chitariya. However, during the course of trial, Ramavtar absconded and vide order dated 24.11.1982 a separate trial was ordered to be held for him.

During the course of the trial, the charges for offence under Sections 395 and 307 of the Code were framed against all the accused persons including the present appellant, Yadram. They denied the same and

requested for a trial. In order to prove its case, the prosecution examined thirteen witnesses. And in order to prove his case, the appellant examined a single witness D.W.1, Munsii. In the statement under Section 313 of the Criminal Procedure Code (henceforth to be referred to as 'the Cr.P.C.', for short), the accused appellant denied the case of the prosecution and claimed that he was caught by the villagers in the forest and has been falsely implicated in the case. According to him, he came to buy a buffalo and had stayed the night at the house of Munsii (D.W.1). Thus, according to him, he has been falsely implicated in the case. However, after going through the oral and documentary evidence, the learned trial court convicted and sentenced the present appellant as aforementioned, but acquitted the other three accused persons namely Maharaja, Padma and Chitariya. The present appellant was also acquitted for offence under Section 307 of IPC, but was convicted under Section 395 of IPC. Hence, this appeal before this Court.

Mr. Suresh Dhanwal, the learned counsel for the appellant, has vehemently argued that there is a

clear contradiction amongst the testimonies of the witnesses with regard to the place where the appellant was caught by the villagers. Moreover, although it is alleged that a sword was recovered from the appellant and even Mst. Kasturi who was allegedly injured by the sword, has not attributed the injuries to the appellant. Furthermore, the appellant was a young man of 30-31 years, on the date of arrest. This was the first offence committed by him. Therefore, benefit of probation should have been given to him by the learned trial court. However, the learned trial court has not given any reason for not extending the benefit of Probation of Offenders Act, (henceforth to be referred to as 'the Act', for short).

On the other hand, the learned Public Prosecutor, Mr. Jagdish Lamba, has strenuously argued that since the eyewitnesses were injured, their presence at the scene of the crime cannot be doubted. According to the witnesses, Yadram, the appellant before us, was caught red-handed while he was trying to escape from the scene of the crime along with the other dacoits. A sword and box were recovered from him and he

was produced by the villagers before the police officers. Hence, his involvement in the dacoity cannot be denied. Lastly, the trial court could not extend the benefit of the Act as the offence under Section 395 of IPC is punishable with life.

We have heard both the learned counsels for the parties and examined the record and have perused the impugned judgment.

There is, indeed, a contradiction between the witnesses with regard to the place where the appellant was caught by the villagers. According to P.W.1, Akhesingh, the appellant was caught in the field of Murari Brahmin. However, according to P.W.2, Madansingh, the appellant was caught in the field of Ganga Prasad. But according to P.W.4, Mst. Kasturi, the appellant was caught just outside their house. Similarly, according to P.W.5, Mst. Soniya, the appellant was caught just outside their house. But according to P.W.8, Hakim Singh, Ganga Prasad's farm was full of water where one of the assaultants was caught. Thus, there is utter confusion as to the place

where the appellant was caught. The learned trial court has merely presumed that the farm of Murali Brahmin and Ganga Prasad is the same. However, the prosecution has not brought any evidence to support this presumption. But even this lacuna in the prosecution case is not fatal to the prosecution. For, the fact still remains that, indeed, the appellant was caught by the villagers and by the witnesses as he was trying to escape from the scene of the crime. Immediately, after the incident, he was handed over to the police by the witnesses. Thus, his involvement in the alleged crime is undeniable.

The learned counsel for the appellant has claimed that the benefit of provisions of the Act should have been extended by the learned trial court. However, the said contention is clearly untenable in the light of Section 4 of the Act. Section 4 clearly states as under :-

“4. Power of court to release certain offenders on probation of good conduct.--(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that,

having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour.

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond."

In the present case Section 395 prescribes life imprisonment as the punishment. Therefore, in light of Section 4 the benefit of the Act cannot be extended to the appellant.

It has been brought to the notice of this Court that the appellant has already served about 6 months of incarceration. In the case of *Raj Singh Vs. State of Haryana* (2000 (10) SCC 151), the Apex Court while denying the benefit of the Act had reduced the sentence of the person as already undergone. Considering the

fact that the occurrence had taken place as far back as in December, 1977, considering the fact that the appellant was convicted in the year 1984 and he has been out on bail for the last twenty-three years, considering the fact that he has been leading a peaceful life without disturbing the public tranquility and without creating any law and order problem, this Court is inclined to confirm the conviction but reduces the sentence under Section 395 from 5 years rigorous imprisonment and a fine of Rs. 500/- to the period already undergone. Since the appellant is already out on the bail, his bail bonds shall not be forfeited.

With these observations, this appeal is partly allowed.

(R.S. CHAUHAN), J.

MRG.